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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,
10 Plaintiff,
11 v.
12 Evelio Cervantes-Conde,
13 Defendant.
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No. CR-09-00829-002-TUC-RCC (JR)
ORDER

15 On March 17, 2017, the Court denied Defendant's Motion for Sentence Reduction
16 (Doc. 343) based on the retroactive reduction in base offense levels for drug convictions
17 under the United States Sentencing Guidelines. (Doc. 356.) The parties filed a Joint Motion
18 to Vacate and Remand in the Ninth Circuit, arguing that the matter should be remanded for
19 further proceedings because the undersigned had not provided an explanation for its denial.
20 *United States v. Evelio Cervantes-Conde*, Case No. 17-10145, Doc. 19 (9th Cir. Jan. 24,
21 2018). The Ninth Circuit granted the motion on January 24, 2018. (Doc. 371-1.) The
22 Government subsequently filed a Motion to Re-Draft March 21, 2017 Order, to provide
23 information regarding the denial. (Doc. 373.) The Court will grant the motion and provide
24 an explanation for the denial herein as mandated by the Ninth Circuit.

25 "[A] judgment of conviction that includes [a sentence of imprisonment] constitutes
26 a final judgment" and may not be modified by a district court except in limited
27 circumstances." 18 U.S.C. § 3582(b). "Section 3582(c)(2) establishes an exception to the
28 general rule of finality 'in the case of a defendant who has been sentenced to a term of

1 imprisonment based on a sentencing range that has subsequently been lowered by the
2 Sentencing Commission pursuant to 28 U.S.C. § 994(o)' and made retroactive pursuant
3 to § 994(u)." *Dillon v. United States*, 560 U.S. 817, 824 (2010). In this instance, the
4 district courts may "reduce the term of imprisonment, after considering the factors set
5 forth in section 3553(a) to the extent that they are applicable, if such a reduction is
6 consistent with applicable policy statements issued by the Sentencing Commission." *Id.*
7 at 824-25 (citing 18 U.S.C. § 3582(c)(2)). However, "even where a defendant is
8 permitted to seek a reduction, the district judge may conclude that a reduction would be
9 inappropriate . . . for the statute permits but does not require the court to reduce a
10 sentence." *Freeman v. United States*, 564 U.S. 522, 532 (2011). The 3553(a) factors that
11 may be considered include "the nature and circumstances of the offense and the history
12 and characteristics of the defendant," 18 U.S.C. § 3553(a)(1); the interest in "protect[ing]
13 the public from further crimes of the defendant," § 3553(a)(2)(C); and the interest in
14 deterring criminal conduct, § 3553(a)(2)(B).

15 After trial, Defendant was convicted of two counts; one conspiracy and one
16 attempt to possess with intent to distribute cocaine. (Doc. 240.) The Government asked
17 the Court to sentence Defendant to 185 months' incarceration with an enhancement for
18 his role as a supervisor of the criminal conduct. (Doc. 292 at 10-11.) The Court adopted
19 the Presentence Report's determination that Defendant was a criminal history category 1,
20 a total offense level 32, and subject to a sentence between 121-151 months incarceration
21 under the sentencing guidelines. (Doc. 276.) This sentencing range did not include the
22 enhancement for his supervisory role. However, because his conduct was similar to that
23 of a co-defendant who received the enhancement, the Court sentenced him to the high
24 end of the sentencing range—151 months in custody followed by 5 years supervised
25 release for each count to run concurrently. (Doc. 292 at 11-12.)

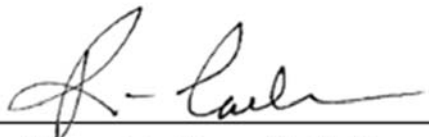
26 There is no dispute that Defendant is eligible for a sentencing reduction under 28
27 U.S.C. § 994(o). The Court, however, denied a reduction in sentence because of
28 Defendant's history and characteristics, for the protection of the public, and in the interests
of deterrence. The Court finds that Defendant's sentence is of sufficient length to

1 accomplish these goals, but not greater than necessary. The Presentence Report reveals
2 Defendant has engaged in criminal activity on multiple previous occasions; he has been
3 charged with money laundering, currency seizure, and even an identical charge to this
4 instant case—conspiracy with intent to distribute cocaine. His prior charges did not deter
5 him from engaging in the instant offenses. In addition, Defendant was not merely peddling
6 a small amount of cocaine; the PSR reveals amounts equaling 10, 30, and even 70
7 kilograms of the substance. Furthermore, Defendant played an organizational role in the
8 criminal conduct. The Defendant’s conduct and his role in the offense do not persuade the
9 Court to reduce his sentence, regardless of the retroactive amendment to the sentencing
10 guidelines.

11 Accordingly, IT IS ORDERED Plaintiff’s Motion to Re-Draft March 21, 2017,
12 Order is GRANTED. (Doc. 373.) No further hearing is necessary in this matter.

13 Dated this 26th day of April, 2019.

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Honorable Raner C. Collins
Senior United States District Judge